THE CORPORATION JOURNAL

(REGISTERED U. S. PAT. OFFICE)

VOL. X, No. 13 JANUARY, 1933 PAGES 289-312

COMPLETE NUMBER 206

Published by

THE CORPORATION TRUST COMPANY AND AFFILIATED COMPANIES

The policy of The Corporation Trust Company in all matters relating to the incorporation, qualification, statutory representation, and maintenance of corporations, is to deal with members of the bar, exclusively.

The Lawyer and His Client

Judge Cuff, of the New York Supreme Court, Kings County, has this to say (259 N. Y. Sup. 57): "The office of a lawyer is one of great importance. He is schooled in the substantive law, has studied the intricate rules of practice, and is familiar with the pitfalls made in this complex world for the uninitiated. He has the power of expression and is skilled in argument. The road he travels is technical, but he knows the turns—others get lost. One of the reasons why he represents people is that they could not find the way without his help. In the course of litigation he may disagree with his client; may lose faith in him; may even be humiliated by him. The profession demands of him that he stand by under most trying conditions—lest, unprotected, his client fall down harder than justice requires. It may be that he should make no move against the other party, nor raise a defense to a charge projected, but, by the same token, he should not desert in the midst of the battle. The relation of attorney and client is a sacred one, and it binds the lawyer, although not the client, to continue to represent him until he is properly relieved."

President.

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The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August, and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices (see next page).

When it is desired to preserve the Journal in a permanent file, a special and very convenient form of binder will be furnished at cost ($1.50).

Contents for January

Interstate and Intrastate Commerce

In a general way, "doing business" by a corporation in a foreign state may be described as engaging therein in an enterprise characterized by some permanence and continuity, that is, transacting within the state some substantial part of its ordinary business, continuous in the sense that it is distinguished from merely casual or occasional transactions. The term has been defined as, "the doing or performing a series of acts which occupy the time, attention, and labor of men for the purpose of livelihood, profit or pleasure" (*Fuller v. Allen*, 46 Okla. 417); and the authorities seemingly agree also that, "doing any business," means business, "involving transactions concerning the actual purposes for which the corporation was organized, and does not include transactions between corporators and stockholders themselves involving transactions concerning promotion, transfers of stock and meetings of the board of directors for such purposes only," (*Cockburn v. Kinsley*, 135 P. 1112).

Recorded findings as to what constitutes "doing business" have always been more or less vague and unsatisfactory when an attempt is made to apply these to a new particular state of facts. There are, however, certain operations so plainly interstate in character that no doubt exists regarding the question. Into this category falls the simple solicitation of orders by traveling salesmen, subject to approval at the home office of the corporation, and the subsequent shipment of goods. Other transactions are just as plainly intrastate in character, such as manufacturing, even though the manufactured articles are intended for interstate shipments, or the sale of a product in a state after the ending of the interstate movement.

Of course, there is a line of demarcation between intrastate and interstate commerce transactions, but just where this line falls is often difficult to determine; and on either side of the line will be found a twilight zone, in which fall a large portion of commercial transactions. It is the transaction close to the line, in one or the other of these twilight zones, which causes difficulty. The addition or subtraction of one fact may change the entire complexion of a transaction as to its intrastate or interstate character; and it is quite possible for courts in different jurisdictions to arrive at different conclusions regarding a question presenting the same, or to a large extent similar, facts.

This question of "doing business," because of the penalty provisions relative thereto, in the statutes of the various states, is one of prime importance to every corporation engaged in activities in a foreign state. Not infrequently the question may not be settled even by reference to the statutes, decisions, rulings and other pertinent guides.

Domestic Corporations

Delaware.

Unpaid dividends on cumulative preferred stock having accrued a new class of preferred stock may be created calling for payment of dividends before the unpaid dividends referred to are paid. Payment of dividends on cumulative preferred stock of a Delaware corporation was in arrears; at a stockholders meeting proposed amendments to the charter were adopted, such amendments, *inter alia*, creating a new prior preference stock, and, in effect, abolishing the right of the holders of the old preferred stock to receive the unpaid dividends accrued thereon. The corporation is offering the new prior preference stock on the representation that it is entitled to dividends before any back dividends on the old preferred stock are paid. Plaintiffs, dissenting old preferred-stock holders, in a New York state court, demanded relief as follows: A declaratory judgment that the holders of the old preferred stock are entitled to the unpaid accrued dividends before any dividends may be paid on the new prior preference stock or on the common stock, and before any payment on winding up or redemption may be made to other shareholders, and asking that the corporation be enjoined from offering the new stock under the representation referred to. Removal to the United States District Court, Southern District of New York; jurisdiction questioned; the injunctive feature (sought in addition to a declaration of rights) gives jurisdiction (see 1 F. Supp. 294),—and there is no question of internal management of a foreign corporation, but rather a question involving a contractual relationship between the corporation and its shareholders,—furthermore, the corporation's only place of business is in New York City so that "it is a foreign corporation only in the strict legal sense." The court holds that while it may not pass on the rights of the plaintiffs against the common stockholders or on whether or not the back dividends may be wiped out altogether, it may consider whether or not the back dividends may be subordinated to dividends on the new prior preference stock,—and so whether or not the corporation should be enjoined from offering the new stock under the representation to which reference has been made. The court, relying on *Morris v. American Public Utilities Co.*, 14 Del. Ch. 136, 122 A. 696, says that "it is quite clear that in Delaware a corporation, by vote of a majority in interest of the stockholders of each class, may so amend its charter that the dividends on newly created prior preferred stock will have priority over dividends theretofore accrued on cumulative preferred stock." This being so the statement referred to "appears to be a true statement"—therefore injunction is denied, and, "as the bill cannot be entertained except as to its injunctive aspect, * * * it must be dismissed." *Harr, Jr., as Executor etc. et al. v. Pioneer Mechanical Corporation*, decided Nov. 18, 1932, Commerce Clearing House Court Decisions Reporting Service, Requisition No. 73505. Albert M. Lee, of New York City, for plaintiffs. Cotton, Franklin, Wright & Gordon (Paxton Blair of counsel), all of New York City, for defendant.

Florida.

Statutory and common law right of stockholder to examine books of his corporation. Holder of certain preferred shares (non-voting) seeks mandamus to permit examination of his corporation's books; demurrer overruled; motion granted to strike return subsequently filed; writ of error; Florida Supreme Court, finding no reversible error, affirms. The specific question covered by this digest is "whether or not Section 6013 Florida Compiled Laws of 1927 abrogates that portion of the common law rule which gives any stockholder of a private corporation the right to inspect the records and books of accounts of such corporation at a proper time and place for a proper purpose." "Briefly stated Section 6013 permits a stockholder or stockholders owning not less than one-tenth of the stock to examine the books and records of a private corporation at a reasonable time and place without having to resort to mandamus, or in case of refusal it is procurable without having to set forth allegations to show that the inspection sought was being requested for a proper purpose, etc." There is nothing in the record to show that the petitioner represented one-tenth of the subscribed stock. Indicative of the reasoning leading to the affirmation (on the particular point here covered) are the court's words: "It is almost uniformly held that statutes giving the right of inspection to stockholders of the books and records of private corporations do not abridge the right as it existed at common law but rather enlarge and extend it by removing some of the common law limitations." *Soreno Hotel Co., plaintiff in error, v. Florida, ex rel. Otis Elevator Co., defendant in error,* Commerce Clearing House Court Decisions Reporting Service, Requisitions No. 76140. Harris & Kennedy and J. Uhle Bethell, all of St. Petersburg, for plaintiff in error. Carabello, Graham & Cosio, of Tampa, for defendant in error.

Illinois.

Without statutory authority corporations may not consolidate. Two Illinois non-profit corporations (clubs) sought to consolidate (so let us characterize the attempt) into a new third club. The question whether the transaction by which the property of the two clubs passed to the third club was a sale or a consolidation was argued at length before the Illinois Supreme Court, on appeal. The court says that the understanding was general, apparently, that a consolidation was contemplated. "What any of them (the respective members and others) thought about the effect of the action proposed is, however, not very material. The question is what was the legal effect of the things done." It is held that "the transaction was, in fact, a consolidation." And then: "Corporations cannot consolidate without statutory authority, and the rule applies to corporations not for pecuniary profit to the same extent as to other corporations." "There is no statute in this state which authorizes the consolidation of corporations not for pecuniary profit, and with-

out such statute the power is forbidden." Judgment below reversed. Rehearing denied. *Gunggoll et al. v. Outer Drive Athletic Club et al.*, 182 N. E. 409. Maximilian J. St. George, of Chicago (Franklin J. Stransky, of Chicago, of counsel), for appellants. Gann, Secord & Stead and Walter E. Beebe, all of Chicago (Loy N. McIntosh, R. V. Fletcher, and Irvin Rooks, all of Chicago, of counsel), for appellees.

Massachusetts.

Action against directors of corporation because of investment of its funds in a loan to and in stock of another corporation of which they were both directors and stockholders. Action is as stated in the caption, brought by the receiver of the investing-creditor corporation, in its name, after bankruptcy of the second corporation, charging self interest and negligent and improvident acts, etc., allegedly responsible for the heavy losses sustained on the stock and loan investment. The Supreme Judicial Court of Massachusetts (Suffolk) reverses the decree below for the plaintiff and enters a decree dismissing the bill with costs. The court says that there is no warrant for a finding that the defendant directors failed to perform any fiduciary duty which they owed the plaintiff. "It is held that transactions between corporations having directors in common, and in which the directors are personally interested, are not invalid as matter of law. Hence the defendants are not in the position of having paid out money in pursuance of acts which were null and void and upon which a liability may be predicated." "The burden rests upon the plaintiff in the case at bar to prove bad faith or lack of sound judgment, negligence or other actionable wrong on the part of these defendants." "It is plain that the plaintiff has failed to sustain the burden of proving either" (lack of sound judgment or negligence). "Nor does it appear that they acted in bad faith," etc. *Crowell & Thurlow S. S. Co. v. Crowell et al.*, 182 N. E. 569. A. C. Burnham, of Boston, for appellants. Lee M. Friedman and P. D. Turner, both of Boston, for appellee.

Minnesota.

Rescinding of contract by minor who allowed his age to be misrepresented, and recouping by vendor of damages due to depreciation through use by the minor of the article sold. The Supreme Court of Minnesota affirms, here, the judgment below the effect of which is to allow the vendor of an automobile to a minor (in his twenty-first year) who allowed himself to be represented as of age, to recoup damages for depreciation due to use of the car by the minor, on his bringing of suit, on account of such minority, to recover payments made under a conditional sales contract. The court says: "It seems logical to us to hold that an infant who is responsible for his torts but not for his contracts, unless for necessaries, and who fraudulently deceives a vendor as to age, must permit the vendor to recoup the damage by depreciation due to use of the property purchased

when he seeks to rescind his voidable contract and to recover payments which he made thereunder. We therefore hold that such recoupment should be allowed in the case at bar notwithstanding the contract may not have been provident from the infant's standpoint." *Steigerwalt v. Woodhead Co., Inc.*, 244 N. W. 412. Samuel Saliterman, of Minneapolis, for appellant. Shearer, Byard & Trogner, Stinchfield, Mackall, Crounse, McNally & Moore, and John M. Palmer, all of Minneapolis, for respondents.

New Jersey.

On the mortgaging of a corporation's property to secure a debt of another corporation, the former's subsidiary. Bill by receiver of an insolvent New Jersey corporation to set aside a real estate mortgage made by the company to the defendant as security for a debt of another New Jersey corporation, nine-tenths of the stock of the latter company being owned by the former. Suit was threatened against the subsidiary on its debt. The mortgage in question was given as security to induce forebearance. On final hearing the Court of Chancery of New Jersey entered a decree for the defendant. One proposition advanced by the receiver (the only one covered here) was that as the mortgage was given to secure the debt of another company, it was ultra vires the insolvent corporation, and a fraud on creditors. As a general rule the pledging of its assets by a corporation for the accommodation of a third party is a transaction impeachable by creditors, but, says the court, this limitation on corporate powers in this respect is not presently involved because of the substantial stock interest of the one corporation held by the other. "A corporation cannot, of course, lend its credit or pledge its property purely as an accommodation to a stranger. (Cases cited.) But that it may, in self preservation, to protect its stock interest in another or a subsidiary company, is well established by the authorities. (Cases cited.)" *Jesselsohn v. Boorstein*, 162 A. 254. David Bobker, of Newark, for complainant. William Boorstein, of Jersey City, for defendant.

Pennsylvania.

Prayer of minority stockholder for a receiver for his corporation, and for other relief, denied. Suit by a minority shareholder (one of the organizers) and a former employee of a Pennsylvania corporation against the two principal stockholders and the corporation, seeking the appointment of a receiver, liquidation of assets, etc. Affirming the decree below dismissing the bill, the Supreme Court of Pennsylvania says that "a receivership and dissolution of the corporation is a radical remedy to be invoked only in a case of legal necessity" and finds that here no such necessity exists since, among other negatives, no question of insolvency is involved, no violent internal dissensions rendering corporate action impotent are apparent, and, quoting the chancellor's words, "The bill does not definitely set forth and describe a single dishonest or fraudulent act"

tending to imperil complainant's interests or otherwise. The court says: "The quintessence of the complaint in this case is: First, that the board of directors are managing the affairs of the company in a manner that invites the disapproval of the plaintiff, who is a minority stockholder and who is outvoted in the directorate; and second, that plaintiff was wrongly discharged. Since the corporate management offends plaintiff's judgment and opinion rather than his legal and equitable rights the offense is not one that moves a chancellor to raise an admonishing or helping hand." *Schuster v. Largman, et al.*, 162 A. 305. Howard I. James, of Bristol, and Joseph R. Embery, of Philadelphia, for appellant. I. J. Van Artsdalen (of Van Artsdalen & Biester) of Doylestown, and L. E. Levinthal, of Philadelphia, for appellees.

Washington.

Corporation, stock of which is owned by one individual, not alter ego, necessarily, of the individual. Suffice it here, having in mind the foregoing caption, to quote from the controlling and dissenting opinions in this case, decided by the United States Circuit Court of Appeals, Ninth Circuit, affirming the decree below which applies the separate-entity-of-the-corporation doctrine. In dissent it is said: "It is a familiar doctrine of equity that, where all the stock of a corporation is owned by an individual, equity will look through form to actuality and hold the corporation to be merely the alter ego of the stockholder." From the controlling opinion: "An individual who is allowed to incorporate a joint stock company is given many advantages that he would not enjoy if he owned the business personally without the guise of corporate organization; it is not too much to ask that such a person, in return for the rights that he has been granted, be required to respect the organization that he has created and to allow it to function through legally recognizable corporate acts." *Exchange Nat'l Bank of Spokane et al. v. Meikle*, 61 F. (2d) 176. Hamblen & Gilbert and Post, Russell, Davis & Paine, all of Spokane, for appellants. Sidney Teiser and Teiser & Keller, all of Portland, Ore., for appellee.

Foreign Corporations

California.

Michigan partnership association, limited, admitted to do business in California as a foreign corporation is considered to be such by California. Action involving refusal to accept deed to property under a contract of sale "solely on the ground that respondent is in fact a partnership, and as such has no power or capacity to hold or convey title to real property in its firm name." The Supreme Court of California affirms the judgment below for plaintiff, a Michigan limited partnership, licensed to do business in California under its laws applicable to foreign corporations. The court found it unnec-

essary to decide whether or not the Uniform Partnership Act adopted by California after the property in question was acquired by the Michigan organization and which act specifically authorizes the acquiring and conveying of real property in the name of a partnership, is retroactive, as it holds that respondent, so far as its power to hold or convey real property is concerned, is not a partnership but a corporation. Examining the Michigan law under which respondent was organized it is found that though called "partnership associations, limited," such associations possess all the powers and attributes of a corporation; Michigan holds such organizations to be corporations or quasi corporations; even if Michigan did not do so, or even if she treated such associations as common-law partnerships, California would not be bound: "If the powers and faculties conferred upon it are such as to make it essentially a corporation, it will be held to be such, regardless of what or how the state of its creation calls or treats it." *Hill-Davis Co., Limited v. Atwell*, 10 P. (2d) 463. J. F. Coonan, of Eureka, for appellant. H. C. Nelson and Nelson & Ricks, all of Eureka, for respondent.

Stock of California corporation owned by foreign corporation may be voted by latter, though not licensed to do business in state. The fundamental question here decided is whether or not an assessment laid on stock of a certain California corporation is enforceable; incidental thereto, the California District Court of Appeal, Third Appellate District, affirming the judgment below sustaining the assessment, held as stated in the caption hereof. Complaint was made that in the steps leading up to the assessment there had been counted votes cast by a foreign corporation allegedly doing business in California though not licensed. The court says: "Our attention has not been called to any case holding that the mere ownership of stock in a domestic corporation by a foreign corporation constitutes the transaction of business by a foreign corporation within this state. * * * Even though it should be held that owning stock by a foreign corporation in a domestic corporation is doing business, the voting of the stock does not appear to be prohibited by Section 408, California Civil Code. The acts there prohibited, and for which penalties are attached, do not include the voting of stock." *Farbstein, as Administrator etc. v. Pacific Oil Tool Co., Ltd.*, 15 P. (2d) 766. R. Dechter, of Los Angeles, for appellant. Robert H. Dunlap and George R. Larwill, both of Los Angeles, for respondent.

New York.

Stockholder of foreign corporation doing business in New York held liable for compensation due employee for services rendered the corporation in New York. A corporation, foreign to New York, licensed to do business in that state, in the course of its business incurred an obligation to a citizen of New York for services rendered by him for it in New York. Section 71 of the New York Stock Corporation Law provides that the shareholders of every stock cor-

poration shall be personally liable for debts due by it to its employees for services rendered, and that an action against a stockholder will lie after judgment has been recovered against the corporation and an execution thereon has been returned unsatisfied. This step and all other steps precedent provided for by the statute having been taken an employee-creditor brought this action against a stockholder of the corporation. The Municipal Court of the City of New York, Borough of Manhattan, Fourth District, denies the motion to dismiss founded on the proposition that the law provision referred to is without application to stockholders of a corporation foreign to New York. The court says that the statute applies, in terms, to "*every* stock corporation," foreign corporations are not expressly excepted, "it should be our endeavor to put foreign corporations on a parity with domestic corporations," section 71 is to be distinguished "from the other provisions of the Stock Corporation Law, considered in those cases where our courts have held that the provisions of the Stock Corporation Law have no application to a foreign corporation, but only to a domestic corporation, unless expressly stated in the statute to apply to a foreign corporation. The only local precedent rules contra: *Bogardus v. Fitzpatrick*, 139 Misc. 533, 247 N. Y. S. 692. But, with all due deference to that precedent, I am not certain as to the facts in that case, nor convinced of its conclusiveness." Complaint sustained—"at this stage of the case." *Spector v. Brandriss*, 259 N. Y. S. 558. Morris J. Mayer, of New York City, for plaintiff. David F. Cohen, of New York City, for defendant.

Bringing an action does not constitute "doing business" by a foreign corporation. Mention is made of this case here for the purpose, solely, of recording the statement of the New York Supreme Court, Special Term, New York County, that "bringing an action does not constitute doing business." The action is by minority shareholders of a Delaware holding corporation, on behalf of themselves and of the holding company, though the acts complained of are the acts of the New York subsidiaries. The court says, in connection with its statement as quoted above, that "there is no proof that the foreign corporation is doing business here" and "again, the foreign corporation is but a nominal party" to the action. *Schneider v. Greater M. & S. Circuit*, 259 N. Y. Supp. 319. Appearances, variously: Nathan R. Margold; Nathan Burkau; I. Gainsburg; all of New York City.

South Dakota.

Soliciting orders, without more, does not constitute "doing business" by foreign corporation. Action by a corporation foreign to South Dakota, and not licensed to do business in that state, for balance due on the purchase price of law books the orders for which were taken by the corporation's solicitors in South Dakota, such orders being accepted at the company's home office, the books then being shipped from without South Dakota to the customer in that state. The defense of "not qualified" was interposed; the court be-

low directed a verdict for defendant on such ground. The Supreme Court of South Dakota holds that this was error as the contract was one in interstate commerce, and reverses. *Lawyers' Co.-Op. Pub. Co. v. Bauer,* 244 N. W. 327. Franklin P. Matz, of Huron, for appellant. Maurice McKee, of Rapid City, for respondent.

Texas.

Selling goods through traveling salesmen in itself constitutes doing business in Texas by unqualified foreign corporation. A Missouri corporation, not licensed to do business in Texas, and whose doing of business in Texas consists only of selling shoes in that state through traveling salesmen who carry samples, orders taken by the salesmen being subject to approval and acceptance at the company's home office in Missouri (and shipment on accepted orders being made from without Texas, of course, though it is not so stated) such salesmen having no authority otherwise than to book orders, is being sued, with another, for damages on account of personal injuries sustained through alleged negligence of defendants. Process was served on one of the company's soliciting agents, residing in Texas. The company, appearing specially, objected to the jurisdiction of the court and to such service and filed a motion to dismiss, etc. The United States District Court, S. D. of Texas, Victoria Division, (to which there had been removal from a state district court), concludes "that the defendant shoe company is doing business in Texas in such manner as to give the district court of Victoria county jurisdiction over it, in this case, and that this court has jurisdiction." And: "There seems to be no escape from the conclusion that the service on Dan Smith (the "traveling salesman") is sufficient under Article 2031, Texas Revised Civil Statutes of 1925,"—which provides, *inter alia,* for service "upon any local or traveling agent, or traveling salesman." *Hasbick et al. v. Hamilton-Brown Shoe Co. et al.,* 1 F. Supp. 63. Proctor, Vandenberge, Crain & Vandenberge and J. W. Ragsdale, all of Victoria, for plaintiffs. Carl Wright Johnson and H. W. Moursund, both of San Antonio.

Failure of foreign corporation alleging a permit to do business in Texas, and alleging a home office in the state, to prove permit for both prohibits judgment from being entered in its favor. A corporation, foreign to Texas, which, by its allegation, has a permit to do business in the state and has its home office and principal place of business in Texas in Fort Worth, brought this action of trespass to try title and for an injunction against certain oil drilling operations, etc. Judgment for the corporation in the trial court. The Court of Civil Appeals of Texas, Dallas, reverses and remands for a new trial. That the corporation was doing intrastate business in Texas and had its office and agency in the state is amply evidenced, says the court, and, continuing—"The conclusion is therefore inevitable that appellee's failure to prove that it had a permit authorizing it to transact business in Texas, or to establish an office in Texas, prohibits judgment from being entered in its favor," under

the provisions of sections 1525 and 1536, Texas R. C. S. 1925. *Jenkins et al. v. Pure Oil Co.*, 53 S. W. (2d) 497. Lightfoot & Robertson, of Fort Worth, A. A. Dawson, of Canton, and Saner, Saner & Jack, of Dallas, for appellants. Vinson, Elkins, Sweeton & Weems and David T. Searls, all of Houston, for appellee.

Washington.

Service of process on behalf of foreign corporation on Secretary of State who does not notify corporation there being no statutory mandate for such notice, held valid. Here a Delaware corporation, licensed to do business in Washington, ceased to do business in the state, withdrew therefrom, dissolved, and notified the Washington Secretary of State of such dissolution; its appointed agent for service of process had become a resident of California. The Washington statutes provide for substituted service of process, in such a case as is here presented, on the Secretary of State, there being, however, no provision requiring a notification of the company by him of any such service. In the instant case service was made on the Secretary of State (Assistant Secretary, in fact), who filed it simply, giving no notice to the corporation. Did the Superior Court have jurisdiction—, that is, was the service legal and good? The Supreme Court of Washington, in a 6 to 3 decision, answers, "Yes," saying: "The question of whether the statute of this state under which service of process was made in this case provides for the process of law, presents primarily a Federal question. As we understand the decisions of the Supreme Court of the United States, it has not yet been definitely determined that a statute such as the one now before us is obnoxious to the Fourteenth Amendment to the Federal Constitution. It will be admitted that the question is by no means free from doubt, but we think that the doubt by this court should be resolved in favor of sustaining the jurisdiction of the superior court. If we are in error in this, after the case has been tried upon the merits and there is another appeal, the question can then be considered again, and that error can be corrected by the Federal Supreme Court, which is the court of last resort and highest authority. On the other hand, if we should deny the jurisdiction and be in error, an injustice would be done which could not later be corrected." The court says further that the question whether or not the statute denies to the relator foreign corporation the equal protection of the laws —by discriminating against it—because in the case of domestic corporations and insurance companies when substituted service is made on the Secretary of State he is required by statute to give notice thereof, "is in the doubtful zone"; but resolves it in favor of the statute for the reasons already indicated. *State of Washington, on the Relation of Bond & Goodwin & Tucker, Inc., v. Superior Court of Spokane County et al.*, 15 P. (2d) 660. Todd, Holman & Sprague and Eugene C. Luccock, all of Seattle, for relator. Kimball & Blake and Wakefield & Witherspoon, all of Spokane, and Herbert W. Erskine, of San Francisco, Calif., for respondents.

Taxation

Ohio.

Law imposing tax on intangible property at classified rates held valid. "The petition in this case is an attack upon the constitutionality of the amendment of Article XII, Section 2, of the Ohio Constitution, which abolishes the uniform rule in taxation, and authorizes the legislature to enact classified property tax laws affecting other than real estate." Plaintiffs are an Ohio corporation and the three sole shareholders therein, residents of Ohio. The corporation has returned all of its property for taxation; the shareholders have been called on to return for taxation their shares of stock in the corporation. (Authority: Sections 5328 and 5328-1 Ohio General Code, effective October 14, 1931.) "Investments" listed for taxation are valued and assessed for tax purposes differently from certain personalty used in business; further, "a corporation shall not be required to list any of its investments in the stocks of any other corporation or in its own treasury stock." This tax legislation, enacted under the claimed authority of the constitutional amendment referred to, is assailed as being violative of the due process clause of the Federal constitution, and of several provisions in the state constitution—unwarranted classification, double taxation, etc., etc. The Ohio Court of Common Pleas, Hamilton County, sustains the taxing law against all contrary contentions. "This sort of taxation is lawful"; "there is nothing unusual about this sort of taxation"; there is no capricious, arbitrary, or absurd classification, such as might be held to be unlawful and beyond the power of the legislature to establish; "the power to classify property for taxation purposes would seem to include the power to tax some classes of property doubly"; and (in connection with the exemption in the case of stock ownership by corporations, *supra*), "the legislature having been given the power to classify all personal property may classify property with reference to its ownership,—such a classification is not capricious, arbitrary or absurd." *Ganson et al. v. Heuck, Auditor, et al.*, Commerce Clearing House Court Decisions Reporting Service, Requisition No. 75047.

South Dakota.

Inhibition in Federal constitution against taxation of imports by a state relates to imports from foreign countries only. Action for collection of a South Dakota motor fuel tax, against a municipality of the state. The oil was shipped to the city from without the state. From the record it is inferred that the point of origin of all shipments was within the United States. It was urged, *inter alia*, that "if the Motor-Vehicle Fuel Tax Law of this state is interpreted to require payment of the tax by appellant under the circumstances of this case it must be held unconstitutional within the purview of that portion of Article 1, Sec. 10, Constitution U. S., which provides

that '* * * no state shall * * * lay any imposts or duties on imports.'" The Supreme Court of South Dakota, affirming the judgment below for plaintiff, says on this particular contention: "The word 'imports' as used in this section of the Federal Constitution, has application only to articles imported from foreign countries and has no application to goods transported from one state to another." *State v. City of Sioux Falls,* 244 N. W. 365. L. E. Waggoner and Dan W. Conway, both of Sioux Falls, for appellant. Attorney General and Assistant Attorney General for the State.

CORPORATE MEETINGS HELD

During the past few weeks meetings of the corporations named below, among many others, have been held at some one of the offices of The Corporation Trust Company.

Cone Export & Commission Co.
Electric Shareholdings Corp.
Brown Shoe Company, Inc.
Blue Ridge Corporation
First National Pictures Inc.
Hugo Stinnes Industries, Inc.
The Bahia Corporation
The Automatic Refrigerating Co.
Paramount Publix Corporation
Hugo Stinnes Corporation
McKesson & Robbins Incorporated
Benjamin Moore & Company
Shenandoah Corporation
National Paper & Type Company
South Porto Rico Sugar Company
Coca Cola International Corp.
American Department Stores Corporation
United Artists Theatre Circuit, Inc.
Transcontinental Air Transport, Inc.

Some Important Matters for January and February

This calendar does not purport to cover general taxes or reports to other than state officials, or those we have been officially advised are not required to be filed. *The State Report and Tax Service* maintained by *The Corporation Trust Company System* sends timely notice to attorneys for subscribing corporations of report and tax matters requiring attention from time to time, furnishing information regarding forms, practices and rulings.

ALABAMA—Annual Application for Permit to do Business, due on or before February 1.—Domestic and Foreign Corporations.
Annual Franchise Tax Return due between January 1 and March 15.—Domestic and Foreign Corporations.

ALASKA—Annual Report due within 60 days from January 1.—Foreign Corporations.

ARKANSAS—Franchise Tax Report due on or before March 1.—Domestic and Foreign Corporations.

CALIFORNIA—Franchise (Income) Tax Return due on or before March 15.—Domestic and Foreign Corporations.

COLORADO—Annual Report due on or before March 15.—Domestic and Foreign Corporations.

CONNECTICUT—Annual Report on or before February 15 (if corporation was organized or qualified between January 1 and June 30).—Domestic and Foreign Corporations.

DELAWARE—Annual Report due on or before first Tuesday in January.—Domestic Corporations.

Return of Information at source due on or before March 15.—Domestic and Foreign Corporations making payments of dividends, interest or other income to any citizen or resident of Delaware aggregating $1,000 or more during 1932.

DISTRICT OF COLUMBIA—Annual Report due between January 1 and January 20.—Domestic Corporations.

GEORGIA—Income Tax Return and Return of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

IDAHO—Return of information at the source due on or before March 15.—Domestic and Foreign Corporations.

Annual Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

ILLINOIS—Annual Report due between February 1 and March 1.—Domestic and Foreign Corporations.

INDIANA—Annual Report and License Fee of foreign finance companies due February 1.—Foreign Corporations engaged in the business of financing sales.

Annual Capital Stock Report due on or before March 1.—Foreign Corporations engaged in manufacturing.

KANSAS—Annual Report and Franchise Tax due on or before March 31.—Domestic and Foreign Corporations.

KENTUCKY—Annual Report due on or before February 1.—Domestic and Foreign Corporations.

Gross Retail Sales Tax Report and Payment of Retail Merchants due on or before February 1.—Domestic and Foreign Corporations doing business as retail merchants.

LOUISIANA—Annual Report due on or before February 1.—Domestic Corporations.

Capital Stock Statement and Tax due on or before March 1.—Foreign Corporations.

MAINE—Annual License Fee due on or before March 1.—Foreign Corporations.

MASSACHUSETTS—Return of Information at the source due on or before March 1.—Domestic and Foreign Corporations.

MISSISSIPPI—Income Tax Return and Return of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

MISSOURI—Return of Information at source due on or before March 1.—Domestic and Foreign Corporations.

Annual Franchise Tax Report due on or before March 1.—Domestic and Foreign Corporations.

Annual Return of Net Income due on or before March 15.—Domestic and Foreign Corporations.

MONTANA—Annual Report of Capital employed due between January 1 and March 1.—Foreign Corporations qualified after February 27, 1915.

Annual Return of Net Income due on or before March 1.—Domestic and Foreign Corporations.

Annual Report due on or before March 1.—Domestic and Foreign Corporations.

NEW JERSEY—Annual Franchise Tax Return due on or before the first Tuesday in February.—Domestic Corporations.

NEW YORK—Annual Franchise Tax Report of Real Estate and Holding Corporations due between January 1 and March 1.—Domestic and Foreign Real Estate and Holding Corporations. Forms 41 C. T. and 42 C. T., Art. 9 of the Tax Law.

NORTH CAROLINA—Income Tax Return and Return of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

NORTH DAKOTA—Annual Income Tax Return and Return of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

OHIO—Report to Industrial Commission due during January.—Domestic and Foreign Corporations.

Annual Franchise Tax Report due between January 1 and March 31.—Domestic and Foreign Corporations.

Annual Statement of Proportion of Capital Stock due between January 1 and March 31.—Foreign Corporations.

OKLAHOMA—Return of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

OREGON—Return of Information at the source due on or before January 15 (from corporations filing less than 10 returns) and on or before February 15 (from corporations filing 10 or more returns).

RHODE ISLAND—Annual Report due during February.—Domestic and Foreign Corporations.

Corporation Tax Return due on or before March 1.—Domestic and Foreign Corporations.

SOUTH CAROLINA—Annual Statement due on or before January 31.—Foreign Corporations.

Annual License Tax Report due during month of February.—Domestic and Foreign Corporations.

Annual Income Tax Return and Return of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

SOUTH DAKOTA—Capital Stock Report due before March 1.—Foreign Corporations.

UNITED STATES—Return of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

Annual Return of Net Income due on or before March 15.—Domestic and Foreign Corporations having an office or place of business in the United States.

UTAH—Return of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

Annual Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

VERMONT—Return of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

Annual Report due on or before March 1.—Domestic Corporations.

Annual License Tax Return and Payment due on or before March 1.—Domestic and Foreign Corporations.

VIRGINIA—Annual Registration Fee due on or before March 1.—Domestic and Foreign Corporations.

Annual Franchise Tax due on or before March 1.—Domestic Corporations.

WISCONSIN—Annual Income Tax Return and Return of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

The Corporation Trust Company's Supplementary Literature

In connection with the various departments of its business The Corporation Trust Company publishes the following supplementary pamphlets and forms, any of which it is always glad to send without charge to readers of The Journal:

Amateur Corporate Representation. A booklet dealing with some of the weaknesses of placing a company's statutory representation in the hands of business employes or others not trained in the matters involved.

Delaware Corporations. Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation, completely revised to reflect the changes made by the amendments of 1931.

Incorporation in Canada Under the Dominion Act. Explains the procedure for incorporation of Canadian companies, the requirements, taxes, maintenance of office, etc., and all the special features of the Dominion Companies Act. Attorneys with a client who may, because of tariff barriers, be considering the organization of a Canadian company to conduct the company's Canadian or export business, will find this pamphlet extremely useful.

When Corporations Cross the Line. A simple explanation of the reasons for and purposes of the foreign corporation laws of the various states, and illustrations of when and how a corporation makes itself amenable to them. Of interest both to attorneys and to corporation officials.

What Constitutes Doing Business. (Revised to April, 1930.) A 208-page book containing brief digests of decisions selected from those in the various states as indicating what is construed in each state as "doing business." The digests are arranged by state, but a Table of Cases and a Topical Index make them accessible also by either case name or topic.

Questionnaire on Business Outside State of Organization. This is a form for attorney's use in determining when a corporation should be qualified. The questions are those which will usually bring out the points necessary to be considered.

Why a Transfer Agent? The question of why corporations, even those of small capitalization or with inactive or closely held stock, are safer when their stock records are in the hands of an experienced transfer agent is answered in this pamphlet by actual incidents from the experiences of different corporations.

Why Corporations Leave Home. This is an informal discussion, from the business man's point of view and in layman's language, of why so many business companies are organized under the laws of Delaware instead of in their home states. While primarily for laymen, lawyers also find this pamphlet useful when considering the matter of what state to choose for incorporation of a client's business.

Transfer Requirements Chart. This supplement to The Stock Transfer Guide and Service shows the classifications into which requests for stock transfer are divided and how the principal requirements for each classification may be determined, either by the transfer agent or the individual desiring transfer made.